

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARILYN KRUG</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 248,510
<b>AMERICAN AIRLINES</b>	)	
a.k.a. <b>AMERICAN AIRLINE EAGLE and</b>	)	
<b>AMR-SIMMONS AIRLINES</b>	)	
Respondent	)	
AND	)	
	)	
<b>INSURANCE COMPANY STATE OF</b>	)	
<b>PENNSYLVANIA</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the August 27, 2001, Award of Administrative Law Judge Jon L. Frobish. Claimant was awarded a 3 percent whole body functional impairment for the injuries suffered as a result of her work with respondent through January 24, 1999. The Appeals Board held oral argument on March 8, 2002.

**APPEARANCES**

Claimant appeared by her attorney, Lawrence M. Gurney of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Janell Jenkins Foster of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

### ISSUES

What is the nature and extent of claimant's injury? The parties acknowledge that claimant has returned to work at a comparable wage. Therefore, pursuant to K.S.A. 1998 Supp. 44-510e, claimant's award in this matter is limited to her percentage of functional impairment.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

Claimant alleges accidental injury during her employment with respondent through her last day worked of January 24, 1999. Claimant acknowledges a specific onset of increased pain on December 22, 1998, to her bilateral shoulders and arms, but does not describe a specific traumatic incident on that date. Claimant simply testified that she was lifting luggage, which was her primary job with respondent, and the pain simply became too great for her to put up with anymore. She advised her employer and was referred for treatment initially with Dr. Davison and Dr. Miller, ultimately coming under the treatment of Scott R. Jahnke, D.O., board certified in family practice, physical medicine and rehabilitation.

Dr. Jahnke first saw claimant on February 26, 1999. Her primary complaints of pain were in the shoulders and arms from lifting and stacking luggage. Dr. Jahnke performed a physical examination, finding head tremors, restrictions of forward flexion and limitations in her cervical range of motion. He ordered diagnostic tests, including x-rays. The x-rays displayed foraminal narrowing of the C3-4 and 4-5 regions on the right, with disc space narrowing prominently at C4-5 and C5-6. Claimant also displayed diffuse anterior and posterior arthritis of the cervical spine. He diagnosed myofascial pain syndrome, cervical arthropathy, head tremors and mild hypochondria. Claimant underwent a conservative course of physical therapy, pain medications and muscle relaxers.

Dr. Jahnke continued treating claimant for several months and ultimately referred her for a functional capacities evaluation (FCE). The July 15, 1999 FCE indicated claimant was capable of performing physical activities in the light category of work, with occasional lifting of 20 pounds and 10 pounds frequent. Claimant continued to display some mild decrease in flexion, extension, side bending and rotation. Dr. Jahnke opined claimant had a zero percent impairment to the body as a whole pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. He felt claimant's arm and shoulder problems had resolved. He did not rate her neck, as her original complaints were not to the neck.

Claimant was referred to Philip R. Mills, M.D., board certified in physical medicine and rehabilitation and electroneurodiagnostic medicine, for a medical examination at the request of respondent's attorney. Dr. Mills saw claimant on January 26, 2000. He also diagnosed cervical tremors, which he felt were unrelated to her injury. Claimant did discuss a history of neck pain and headaches and discussed with Dr. Mills a motor vehicle accident in 1990 where she suffered neck injuries. At the time of his examination, claimant's primary complaints were in the right shoulder and right arm. Claimant had visible arthritic changes in her hands. Dr. Mills found claimant's overall range of motion in her cervical spine to be normal.

Dr. Mills assessed claimant a 3 percent impairment to the body as a whole based upon her subjective complaints of pain. He felt claimant displayed underlying degenerative arthritis, myofascial pain syndrome and possible depression, along with the central cervical tremors. He felt the myofascial pain syndrome was probably related to the work activities claimant described. But he found no causal relationship between the cervical tremors or the degenerative arthritis and her work injuries.

Claimant was referred to Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation and a member of the American Board of Electrodiagnostic Medicine and the American Board of Independent Medical Examiners. Dr. Murati examined claimant at her attorney's request on two occasions—September 27, 1999, and again December 13, 2000.

Dr. Murati opined claimant had suffered a 15 percent impairment to the body as a whole stemming from her cervical complaints resulting from her work-related accidents.

Claimant's history is significant in that she suffered neck problems for years. Claimant was involved in an automobile accident in 1990 and had ongoing pain in her neck with resulting headaches for several years prior to her employment with respondent. This was initially denied by claimant at the regular hearing. However, on cross-examination, when provided with information about the preexisting injuries, claimant acknowledged the automobile accident and the prior neck problems. Dr. Jahnke was provided no history of any problems before claimant's December 1998 injury.

Dr. Murati was provided information about claimant's preexisting neck problems, including the MRI taken in February 1998, which displayed signs of arthritis in claimant's cervical spine. Dr. Murati, however, was unwilling to acknowledge this evidence indicated any type of preexisting impairment. He opined the entire 15 percent impairment stemmed from claimant's work-related accident. Dr. Murati's reason for refusing to assess any of claimant's impairment to her preexisting conditions was because he found no information that claimant was limited in her activities of daily living.

In workers' compensation litigation, it is claimants' burden to prove her entitlement to benefits by a preponderance of the credible evidence. K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

K.S.A. 1998 Supp. 44-510e(a) defines functional impairment as follows:

Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

The Administrative Law Judge found claimant's impairment to be most accurately reflected in the opinion of Dr. Mills, who rated claimant at 3 percent to the body as a whole. Dr. Jahnke assessed claimant a zero percent impairment. Dr. Jahnke appeared to diagnose claimant as a hypochondriac, even though he acknowledged he had no psychiatric training. Additionally, Dr. Jahnke failed to consider claimant's neck symptoms, as he was only treating the shoulders. Dr. Murati, hired by claimant, assessed claimant a 15 percent impairment to the body as a whole, but refused to consider claimant's preexisting symptoms and limitations in claimant's cervical spine, verified by the February 1998 MRI. The Appeals Board finds neither Dr. Jahnke nor Dr. Murati to be credible regarding claimant's ongoing functional impairment.

Dr. Mills considered both claimant's neck and upper extremities, and had the opportunity to review several tests performed on claimant. He assessed claimant a 3 percent impairment to the body as a whole based upon her subjective complaints, taking into consideration all of claimant's ongoing limitations. He was advised of claimant's preexisting problems, including the head tremors and the preexisting cervical arthritis.

The Appeals Board finds that the opinion of Dr. Mills is the most credible. The Appeals Board, therefore, finds that the Award of the Administrative Law Judge granting claimant a 3 percent permanent partial general disability should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated August 27, 2001, awarding claimant a 3 percent impairment to the body as a whole for the injuries suffered through January 24, 1999, her last day of employment with respondent, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Lawrence M. Gurney, Attorney for Claimant  
       Janell Jenkins Foster, Attorney for Respondent  
       Jon L. Frobish, Administrative Law Judge  
       Philip S. Harness, Director